

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

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Person To Contact:

, ID No.

Telephone Number:

In Re:

Refer Reply To:

CC:PSI:B09

PLR-167772-03

Date:

December 03, 2004

Legend

Husband =

Wife =

Year 1 =

Year 15 =

Trust 1 =

Child 1 =

Trust A =

Child 2 =

Trust B =

Child 3 =

Trust C =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 14 =

Year 15 =

Property 1 =

Company 1 =

Property 2 =

Company 2 =

Company 3 =

Trust 2	=
Trust D	=
Trust E	=
Trust F	=
Year 7	=
Year 8	=
Year 9	=
Year 10	=
Property 3	=
Property 4	=
Trust 3	=
Trust G	=
Trust H	=
Trust I	=
Year 11	=
Year 12	=
Year 13	=
Property 5	=
Partnership 1	=
Partnership 2	=

Dear

This is in response to your letter dated November 24, 2004, and prior correspondence, requesting an extension of time under § 2642(g) of the Internal Revenue Code and § 301.9100-3 of the Procedure and Administration Regulations to allow Husband and Wife to allocate their individual generation-skipping transfer (GST) exemptions to transfers from Year 1 through Year 15.

The facts and representations submitted are summarized as follows:

Trust 1 Sub-trusts

Husband and Wife executed the Trust 1 agreement prior to September 25, 1985, creating an irrevocable trust. Article A, Paragraph 1 of the Trust 1 Agreement provides that the trust property should be segregated into three separate trusts, one each for the benefit of Child 1 (Trust A), Child 2 (Trust B), and Child 3 (Trust C) (collectively, the Trust 1 Sub-trusts). Article B, Paragraph 1 provides that the primary beneficiary of each separate trust has the right to withdraw any principal that has been added to the

beneficiary's trust during the calendar year, provided, the right to withdraw shall not exceed the lesser of the amount contributed to the trust during the calendar year or the maximum annual gift tax exclusion permitted under § 2503(b) or the total amount contributed to the trust during the calendar year divided by the number of beneficiaries. The discretionary right to withdraw principal shall relate only to principal added to the trust during the calendar year at issue and shall terminate as of December 31st of the calendar year. In the event an addition is made in December, the beneficiary shall have thirty days from the date the addition is made within which to exercise the beneficiary's right to withdraw. Any unused portion of a beneficiary's right to withdraw shall not accumulate to future years. Paragraph 2 provides generally that income from each trust shall be distributed to or for the benefit of the named beneficiary at least annually. Paragraph 3 provides that the Trust 1 Sub-trusts shall terminate on the death of the last to die of Child 1, Child 2, and Child 3. Paragraph 4 provides that if a beneficiary dies before the time fixed for distribution of the beneficiary's trust, then the trust shall be held for the benefit of the person(s) appointed by the beneficiary in his or her will. The beneficiary may not make an appointment in favor of his or her estate, his or her creditors, or the creditors of his or her estate. In addition, the beneficiary may not make an appointment that will terminate the trust prior to the termination date provided in Paragraph 4. Paragraph 5 provides that any unappointed portion of any trust will be held in trust for the beneficiary's then living descendants per stirpes. Post-September 25, 1985 transfers to the Trust 1 Sub-trusts were made in Year 1, Year 2, Year 3, Year 4, Year 5, Year 6, Year 14, and Year 15.

In Year 1, Husband and Wife transferred a 1/30th interest in Property 1 to each of the Trust 1 Sub-trusts. In addition, Husband gifted a paid life insurance policy on Husband's life in equal shares to the Trust 1 Sub-trusts. Finally, Husband and Wife transferred a total of 750 shares of Company 1 stock to the Trust 1 Sub-trusts. Husband and Wife filed Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Returns, (gift tax returns) for Year 1 but did not report the transfers to Trust 1 Sub-trusts and did not allocate GST exemption to the transfers to the Trust 1 Sub-trusts. On the Year 1 gift tax returns Husband and Wife elected to split gifts under § 2513.

In Year 2, Husband and Wife transferred 202 shares of Company 1 stock to each of the Trust 1 Sub-trusts. Later that year, Husband and Wife transferred 310 shares of Company 1 stock to each of the Trust 1 Sub-trusts. Neither Husband nor Wife filed a gift tax return for Year 2.

In Year 3, Husband and Wife transferred a 1/3 interest in Property 2 to each of the Trust 1 Sub-trusts. Also that year, Husband and Wife transferred 300 shares of Company 1 stock to each Trust 1 Sub-trust for a total of 900 shares. Neither Husband nor Wife filed a gift tax return for Year 3.

In Year 4, Husband and Wife transferred 413 shares of Company 1 stock to each Trust 1 Sub-trust for a total of 1239 shares. Also that year, Husband and Wife

transferred 300 shares of Company 2 stock to each Trust 1 Sub-trust for a total of 900 shares. Neither Husband nor Wife filed a gift tax return for Year 4.

In Year 5, Husband and Wife transferred a 1/3 interest in a note receivable secured by a mortgage to each of the Trust 1 Sub-trusts. Neither Husband nor Wife filed a gift tax return for Year 5.

In Year 6, Husband and Wife transferred 500 shares of Company 2 stock to each of the Trust 1 Sub-trusts for a total of 1500 shares. Neither Husband nor Wife filed a gift tax return for Year 6.

In Year 14, Husband and Wife transferred a total of 69 shares of Company 3 stock to the Trust 1 Sub-trusts. Husband and Wife also transferred cash to the Trust 1 Sub-trusts in Year 14. The transfers to the Trust 1 Sub-trusts were reported on Year 14 gift tax returns, but GST exemption was not allocated to the transfers.

In Year 15, Husband and Wife transferred cash to the Trust 1 Sub-trusts. The transfers to the Trust 1 Sub-trusts were reported on Year 15 gift tax returns, but GST exemption was not allocated to the transfers.

Trust 2 Sub-trusts

Husband and Wife executed the Trust 2 agreement in Year 6. Article A, Paragraph 1 of the Trust 2 Agreement provides that the trust property should be segregated into three separate trusts, one each for the benefit of Child 1 (Trust D), Child 2 (Trust E), and Child 3 (Trust F) (collectively, the Trust 2 Sub-trusts). Article B, Paragraph 1 provides that the primary beneficiary of each separate trust has the right to withdraw any principal that has been added to the beneficiary's trust during the calendar year. Any unused portion of a beneficiary's right to withdraw shall not accumulate to future years. Paragraph 2 provides generally that the trustee may, in his discretion, distribute income or principal from each trust to or for the benefit of the named beneficiary. Paragraph 3 provides that the Trust 2 Sub-trusts shall terminate on the death of the last to die of Child 1, Child 2, and Child 3. Paragraph 4 provides that if Child 1 or Child 2 dies before the time fixed for distribution of the beneficiary's trust, then the trust shall be held for the benefit of the person(s) appointed by the beneficiary in his or her will. The beneficiary may not make an appointment in favor of his or her estate, his or her creditors, or the creditors of his or her estate. In addition, the beneficiary may not make an appointment that will terminate the trust prior to the termination date provided in Paragraph 4. Paragraph 5 provides that the sub-trust for the benefit of Child 3 and any unappointed portion of any trust for the benefit of Child 1 or Child 2 will be held in trust for the beneficiary's then living descendants per stirpes. Post-September 25, 1985 transfers to the Trust 2 Sub-trusts were made in Year 6, Year 7, Year 8, Year 9, and Year 10.

In Year 6, Husband and Wife transferred 110 shares of Company 2 stock to each of the Trust 2 Sub-trusts. Neither Husband nor Wife filed a gift tax return for Year 6.

In Year 7, Husband and Wife transferred a 1/18th interest in Property 3 to each of the Trust 2 Sub-trusts. Neither Husband nor Wife filed a gift tax return for Year 7.

In Year 8, Husband and Wife transferred a 1/18th interest in Property 3 to each of the Trust 2 Sub-trusts. Husband and Wife also transferred cash to the Trust 2 Sub-trusts during Year 8. Neither Husband nor Wife filed a gift tax return for Year 8.

In Year 9, Husband and Wife transferred a 1/18th interest in Property 3 to each of the Trust 2 Sub-trusts. Neither Husband nor Wife filed a gift tax return for Year 9.

In Year 10, Husband and Wife transferred a 1/6th interest in Property 4 to each of the Trust 2 Sub-trusts. Husband and Wife also transferred a 1/3 interest in two mortgage note receivables to each of the Trust 2 Sub-trusts in Year 10. Neither Husband nor Wife filed a gift tax return for Year 10.

Trust 3 Sub-trusts

Husband and Wife executed the Trust 3 agreement in Year 8. Section 1.2 of the Trust 3 Agreement provides that the trust property should be segregated into three separate trusts, one each for the benefit of Child 1 (Trust G), Child 2 (Trust H), and Child 3 (Trust I) (collectively, the Trust 3 Sub-trusts). Section 3.1 provides that the primary beneficiary of each separate trust has the right to withdraw any principal that has been added to the beneficiary's trust during the calendar year. Any unused portion of a beneficiary's right to withdraw shall not accumulate to future years. Section 3.2 provides generally that the trustee shall distribute income from each trust to the named beneficiary at least annually. The trustee, in the trustee's discretion, may distribute principal from each trust to or for the benefit of the named beneficiary. Section 3.4 provides that the Trust 3 Sub-trusts shall terminate on the death of the last to die of Child 1, Child 2, and Child 3. On termination, each beneficiary's respective trust shall be distributed to the beneficiary's then living descendants by right of representation. If a beneficiary leaves no descendants surviving him or her, the trustee shall distribute the trust by right of representation to the then living descendants of Husband and Wife. Post-September 25, 1985 transfers to Trust 3 were made in Year 8, Year 11, Year 12, Year 13, and Year 14.

In Year 8, Husband and Wife transferred an 18 percent undivided interest in Property 5 to each of the Trust 3 Sub-trusts. Husband and Wife filed gift tax returns for Year 8 and reported the transfers to the Trust 3 Sub-trusts on those returns. No GST exemption was allocated to the transfers.

In Year 11, Husband and Wife transferred a 1.9047619 percent interest in Partnership 1 to each of the Trust 3 Sub-trusts. Neither Husband nor Wife reported these transfers on a Year 11 gift tax return.

In Year 12, Husband and Wife transferred additional Partnership 1 interests to each of the Trust 3 Sub-trusts. Neither Husband nor Wife reported these transfers on a Year 12 gift tax return.

In Year 13, Husband and Wife transferred a combined total of 2.793 percent interest in Partnership 2 to the Trust 3 Sub-trusts. Husband and Wife reported these transfers on late-filed Year 13 gift tax returns; accordingly, GST exemption was not timely allocated to the Year 13 transfers.

In Year 14, Husband and Wife transferred 1/3 of their general partnership interests in Partnership 1 to each of the Trust 3 Sub-trusts. Husband and Wife reported the Year 14 transfers on gift tax returns filed for Year 14, however, no GST exemption was allocated to the transfers.

Husband and Wife relied on multiple professional tax advisors for information regarding available elections and allocations. Through inadvertence, neither their accountants nor their attorney advised them of the need to allocate GST exemption on their gift tax returns filed prior to the preparation of the current private letter ruling request.

Husband and Wife have each requested the following rulings: (1) an extension of time to allocate each taxpayer's GST exemption as of the date of the gifts to the Trust 1, Trust 2, and Trust 3 Sub-trusts in each of Years 1 through 15; (2) the allocations will be effective as of the dates of each of those gifts; and (3) the date of gift value of each of the transfers will be used in determining the amount of GST exemption to be allocated to each of the trusts.

Section 2513(a)(1) provides that a gift made by one spouse to any person other than the other spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States.

Section 2513(a)(2) provides that paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

Section 25.2513-2(a)(1)(ii) of the Gift Tax Regulations provides that consent to the application of the provisions of § 2513 with respect to a "calendar period" shall, in order to be effective be signified by both spouses. If both spouses file gift tax returns

within the time for signifying consent, it is sufficient if the consent of each spouse is signified on his own return.

Section 2601 imposes a tax on every generation-skipping transfer. A generation-skipping transfer is defined under § 2611(a) as (1) a taxable distribution, (2) a taxable termination, and (3) a direct skip.

Section 2631(a) provides that, for purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 (adjusted for inflation under § 2631(c)) which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

Section 2632(a)(1) provides that any allocation by an individual of his or her GST exemption under § 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

Section 2642(b)(1) provides that, except as provided in § 2642(f), if the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by § 6075(b) for such transfer or is deemed to be made under § 2632(b)(1) or (c)(1) the value of such property for purposes of § 2642(a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of § 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

Section 2642(g)(1)(A) provides, generally, that the Secretary shall, by regulation, prescribe such circumstances and procedures under which extensions of time will be granted to make an allocation of GST exemption described in § 2642(b)(1) or (2), and an election under § 2632(b)(3) or (c)(5). Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

Section 2642(g)(1)(B) provides that in determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

Notice 2001-50, 2001-2 C.B. 189, provides that under § 2642(g)(1)(B), the time for allocating the GST exemption to lifetime transfers and transfers at death, the time for electing out of the automatic allocation rules, and the time for electing to treat any trust as a GST trust are to be treated as if not expressly prescribed by statute. The Notice further provides that taxpayers may seek an extension of time to make an allocation

described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Section 301.9100-1(c) provides that the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except in subtitles E, G, H, and I.

Section 301.9100-3(a) provides that, in general, requests for extensions of time for regulatory elections that do not meet the requirements of § 301.9100-2 must be made under the rules of § 301.9100-3.

Under § 301.9100-1(b), a regulatory election includes an election whose due date is prescribed by a notice published in the Internal Revenue Bulletin. In accordance with § 2642(g)(1)(B) and Notice 2001-50, taxpayers may seek an extension of time to make an election described in § 2642(b)(1) or (b)(2) or an election described in § 2632(b)(3) or (c)(5) under the provisions of § 301.9100-3.

Requests for relief under § 301.9100-3 will be granted when the taxpayer provides the evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Section 301.9100-3(b)(1)(v) provides that a taxpayer is deemed to have acted reasonably and in good faith if the taxpayer reasonably relied on a qualified tax professional, including a tax professional employed by the taxpayer, and the tax professional failed to make, or to advise the taxpayer to make, the election.

Based on the facts submitted and the representations made, we conclude that the requirements of § 301.9100-3 have been satisfied. Therefore, Husband and Wife are each granted an extension of time of 60 days from the date of this letter to make allocations of their respective GST exemptions to the Year 1 to Year 15 transfers to the Trust 1 Sub-trusts, the Trust 2 Sub-trusts, and the Trust 3 Sub-trusts. An individual or supplemental Form 709 should be filed for each taxpayer for each year. Each Form 709 should include a Notice of Allocation properly allocating the taxpayer's GST exemption to the transfers to each trust. The allocations will be effective as of the date of the transfer, and the gift tax value of the transfer to the trusts will be used in determining the amount of GST exemption to be allocated to each trust. The inclusion ratio for each trust will be determined under §§ 2642(a) and 2642(b). A copy of this letter should be attached to each individual or supplemental Form 709 and filed with the Internal Revenue Service Center, Cincinnati, Ohio 45999. Copies are included for this purpose.

Except as expressly provided herein, no opinion is expressed or implied concerning the federal tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings it is subject to verification on examination. Specifically, we express or imply no opinion regarding the value of any of the property transferred to the various sub-trusts over the years. In addition, we have not expressed an opinion as to whether the transfers to the Trust 3 Sub-trusts are subject to an estate tax inclusion period under § 2642(f). Finally, we have not expressed an opinion regarding the inclusion ratio of any of the sub-trusts.

Pursuant to the Power of Attorney on file with this office, this letter is being sent to the taxpayer's representative.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Heather C. Maloy

Heather C. Maloy
Associate Chief Counsel
(Passthroughs and Special Industries)

Enclosures

Copy of this letter for § 6110 purposes

Copy of this letter

cc: